

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 233

May 26, 1995, 12:01 p.m.  
Page S-7607 Temp. Record

## TERRORISM PREVENTION/Emergency Wiretap Authority

**SUBJECT:** Comprehensive Terrorism Prevention Act of 1995 . . . S. 735. Hatch motion to table the Lieberman amendment No. 1200 to the Hatch substitute amendment No. 1199.

### ACTION: MOTION TO TABLE AGREED TO, 52-28

**SYNOPSIS:** As reported, S. 735 will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

The Hatch substitute amendment to S. 735 would make major revisions to the bill, particularly to the provisions regarding international terrorism, alien removal, and fundraising by terrorist organizations.

**The Lieberman amendment** would give the Attorney General, the Deputy Attorney General, and the Assistant Attorney General the authority to order wiretaps without obtaining court orders in cases of conspiratorial activity characteristic of domestic or international terrorism. The amendment would define "domestic terrorism" as meaning "any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States of any State and which appear to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping." The wiretap authority provided by this amendment would last for no more than 48 hours, during which time a court order could be sought. If a court order were not obtained, none of the evidence gained from the surveillance would be admissible in court. This authority would add to similar existing authority for these officials unilaterally to order wiretaps: if there is immediate danger of death or serious physical injury to any person; conspiratorial activities threatening the national security; or conspiratorial activities characteristic of organized crime.

During debate, Senator Hatch moved to table the Lieberman amendment. The motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

(See other side)

YEAS (52)			NAYS (28)		NOT VOTING (20)	
Republicans (45 or 100%)	Democrats (7 or 20%)		Republicans (0 or 0%)	Democrats (28 or 80%)	Republicans (9)	Democrats (11)
Abraham	Hatch	Baucus		Akaka	Domenici <sup>-2</sup>	Boxer <sup>-2</sup>
Ashcroft	Hatfield	Byrd		Biden	Gramm <sup>-2</sup>	Bradley <sup>-2</sup>
Bennett	Jeffords	Heflin		Bingaman	Helms <sup>-2</sup>	Bryan <sup>-2</sup>
Bond	Kassebaum	Moseley-Braun		Breaux	Hutchison <sup>-2</sup>	Feingold <sup>-4</sup>
Brown	Kempthorne	Reid		Bumpers	Inhofe <sup>-2</sup>	Feinstein <sup>-2</sup>
Burns	Lott	Sarbanes		Conrad	Kyl <sup>-2</sup>	Kerrey <sup>-2</sup>
Campbell	Lugar	Simon		Daschle	McCain <sup>-2</sup>	Kerry <sup>-2</sup>
Chafee	Mack			Dodd	Murkowski <sup>-2</sup>	Kohl <sup>-4</sup>
Coats	McConnell			Dorgan	Roth <sup>-2</sup>	Leahy <sup>-2</sup>
Cochran	Nickles			Exon		Nunn <sup>-4</sup>
Cohen	Packwood			Ford		Pryor <sup>-2</sup>
Coverdell	Pressler			Glenn		
Craig	Santorum			Graham		
D'Amato	Shelby			Harkin		
DeWine	Simpson			Hollings		
Dole	Smith			Inouye		
Faircloth	Snowe			Johnston		
Frist	Specter			Kennedy		
Gorton	Stevens			Lautenberg		
Grams	Thomas			Levin		
Grassley	Thompson			Lieberman		
Gregg	Thurmond			Mikulski		
	Warner			Moynihan		
				Murray		
				Pell		
				Robb		
				Rockefeller		
				Wellstone		

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

We fully appreciate and sympathize with our colleagues' intent in offering this amendment, but we must oppose it. It would add very little, if anything, in substance to the ability to track terrorists, but it could lead to very troubling infringements upon the civil liberties of ordinary Americans. Virtually every act of terrorism one can imagine which would require an emergency wiretap--that is, the threat is so immediate that the Government does not have time to obtain a court order--will certainly either involve "an immediate danger of death or serious physical injury" or "a conspiratorial activity threatening the national interest." Emergency wiretap authority already exists for those circumstances. Therefore, the Lieberman amendment is not needed.

In return for not accomplishing anything of substantive value, the Lieberman amendment could be used to trammel Americans' civil liberties because of its expansive and vague definition of domestic terrorism. The amendment would define such terrorism as "any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and which appear to be intended to intimidate or coerce a civilian population or to influence the policy of Government." Some Senators have made the dismissive statement that this amendment would not broaden the laws for which wiretaps may be granted; however, saying it is so does not make it so. The amendment clearly gives the Attorney General, on her own judgment, to determine if a group or individual is involved in conspiratorial activities that threaten human life, and if those activities are in violation of any State or Federal law she may impose a wiretap. Under this amendment, wiretap authority would not be limited to those few circumstances under which a judge may grant it. For example, if the homosexual group ACT-UP or some of the more extreme environmental groups decided to block traffic on a street or block an entrance to a hospital, the Attorney General may note that a State felony law on trespassing has been violated, and then decide that human life is threatened from unsafe traffic conditions or an inability to enter the hospital. On this basis, without any opportunity for anyone to review her authority, she could order secret wiretaps of these groups. We are deeply troubled by this proposal to give this expansive authority to the Attorney General. Perhaps it is simply drafted unartfully, but the potential for political abuse is extreme. The Federal Government, particularly in the 1960's, has been guilty of some unfortunate surveillance activities. We cherish our individual freedoms, and are distrustful of any proposal that allows secret police surveillance. Accordingly, we must support the motion to table the Lieberman amendment.

**Those opposing the motion to table contended:**

Under current law, three officials--the Attorney General, the Deputy Attorney General, and the Assistant Attorney General--have the authority to order emergency wiretaps without a court order if life is in danger, if national security is threatened, or if an organized crime conspiracy is involved. After ordering such an emergency wiretap, a court order authorizing it must still be obtained within 48 hours or else any information gained will be inadmissible in court. Court orders for wiretaps are only available for surveillance on certain types of criminal activity; those crimes are carefully delineated by law. The Lieberman amendment would add to this existing wiretap authority that these officials could also have emergency wiretap authority for surveillance involving domestic terrorism or international terrorism. After ordering such a wiretap, a court order to continue it and to use any information gained would still be required, and to get that order evidence would have to be presented that surveillance was being conducted of a criminal activity that is covered by wiretap authority under current law. Thus, our colleagues' fear that this amendment would make a wholesale expansion in emergency wiretap authority is unwarranted. Some Senators have also argued that this amendment would go too far because it would allow emergency surveillance of terrorists even when there is no reason to believe that they are about to commit a terrorist attack. These Senators note that existing emergency wiretap authority already allows emergency wiretaps of terrorists when the Justice Department believes they pose an imminent threat of causing death or injuries. They are correct, but they are then being inconsistent if they are going to set the standard in this case that emergency wiretaps can only be given when there is imminent danger of death or injury. To our knowledge, we have never heard our colleagues complain about emergency surveillance of organized crime figures. Such figures are indeed despicable people, but they do not have a tendency to commit random acts of mass violence. Surely if we can conduct emergency surveillance of organized crime figures even when we are not certain they are about to commit violent acts we can also conduct emergency surveillance of terrorists. The Lieberman amendment makes a very modest expansion of existing emergency wiretap authority to help law enforcement efforts against terrorism. We are pleased to give it our support.